

TO: WIB Chairs
WIB Directors
Single Points of Contact
Program Directors
Fiscal Directors

FROM: Elizabeth A. Bedwell, Deputy Commissioner
Field Operations/Program Development

DATE: October 4, 2001

SUBJECT: DWD Communication: 2001-11
Policy Guidance for Ensuring Access to Services
for Persons with Limited English Proficiency

RE: Workforce Investment Act, Wagner-Peyser, and Unemployment
Insurance

Purpose

To provide guidance to the recipients of federal financial assistance from the Department of Labor in serving persons with limited English proficiency (LEP).

Rescission

N/A

Content

On August 11, 2000, President Clinton issued Executive Order 13166, entitled "Improving Access to Services for Persons with Limited English Proficiency." Pursuant to this Executive Order, the U. S. Department of Labor's Civil Rights Center (CRC) issued a guidance memorandum on the steps to be taken for ensuring equal access to services for persons with limited English speaking proficiency. A copy of the guidance from CRC (printed in the January 17, 2001 Federal Register) is attached.

This guidance applies to the programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners to the extent that the programs and activities are being conducted as part of the One-Stop delivery system. One-Stop partners, not funded by DOL, are covered under the Section 188 implementing regulations, but not under DOL's Title VI regulations. However, these programs are still subject to the Title VI regulations of their federal grant-making agency.

Persons eligible to be served or likely to be directly significantly affected to a recipient's program or activity are those persons who are in the recipient's geographic area of service. For purposes of this directive, such a geographic area would be the local workforce service area.

The steps taken by the recipient must ensure that the LEP person is given adequate information, is able to understand the services and benefits available, and is able to

receive those services and benefits free-of-charge. The recipient must also ensure that the LEP person can effectively communicate the relevant circumstances of his or her situation to the service provider.

To effectuate a meaningful access program, recipients must first conduct a thorough assessment of the language needs of the population to be served. This can be done by reviewing data from a combination of sources, including the census and the labor market information system, client utilization data from client files, and statistics from school systems and community organizations. Compilation of the data has been completed for you by DWD and the results are attached. The assessment information includes the number of Hispanic individuals registered into CS3 by local office and county of registration. Additionally Census 2000 population data by county are provided.

Next, recipients must develop and implement written procedures for (a) obtaining and providing trained and competent interpreters, (b) providing notification to LEP persons in appropriate languages of their right to free language assistance, (c) ensuring that staff are trained and can work effectively with LEP persons, (d) ensuring the periodic monitoring of the program, and (e) translating written materials. Proposed procedures for ensuring access to services for persons with limited English speaking proficiency have been attached for your information.

Note: Interpreter services could include such options as the use of bilingual staff, staff interpreters, contract interpreters and community volunteers. Recipients are discouraged from the use of friends and family members as interpreters. Such practice may expose the recipient to liability and result in a breach of confidentiality under Title VI and Section 188 of the WIA. If after a recipient informs a LEP person of the right to free interpreter services, the person declines such services and requests the use of a family member or friend, the recipient may use that person, but must document the offer and declination in the LEP person's file.

Written materials, such as applications, consent forms, benefit rights information, filing a complaint of discrimination, and notices advising LEP persons of the availability of free language assistance must be translated into the languages other than English of each regularly encountered LEP group eligible to be served or likely to be directly or significantly affected by the recipient's program or activity. The requirements outlined in this policy guidance also apply to materials posted on web sites. Generally entire web sites need not be translated. Usually only the vital documents or vital information posted would require translation. Materials in use at the WorkOne Centers are currently under review by the Latino Commission. The materials approved by the Latino Commission will be released for use in the WorkOne Centers at a later date.

The resources available to a recipient of federal financial assistance may have an impact on the nature of the steps that recipients must take. For example, a small recipient with limited resources may not have to take the same steps as a larger recipients to provide

LEP assistance in programs and activities that have a limited number of eligible LEP individuals, where contact is infrequent, and/or where the program or activity is not crucial to an individual's day-to-day existence. Claims of limited resources, especially from larger entities, will need to be well-substantiated.

A recipient with fewer than five percent or 1,000 persons (whichever is less) in a language group eligible to be served or likely to be directly or significantly affected by the recipient's program or activity need not translate written materials but rather may provide written notice in the LEP person's primary language, of the right to receive free language assistance, including the right to competent oral interpretation of written materials, free of cost. No person may be denied meaningful access to a recipient's services and benefits on the basis of national origin or inability to communicate.

Recipients have considerable flexibility in determining how to meet their legal obligations to LEP persons. However, recipients must establish and implement policies and procedures to provide language assistance sufficient to fulfill their Title VI and Section 188 responsibilities and that give LEP persons meaningful access to services. DWD is attaching recommended procedural guidance for establishing such a policy. The DOL/Civil Rights Center has legal authority to enforce Title VI and Section 188 as they apply to recipients' responsibilities to provide LEP persons a meaningful access to services.

The Departments of Justice and Labor do not wish to make compliance with the Executive Order overly burdensome. The objective is to provide meaningful opportunity to LEP persons to access and participate in government funded services. In many cases it just means that the recipient needs to take steps to assure that translation services are available. In some cases, the recipient may meet its obligation by making oral assistance available.

Questions may be directed to Fay Stewart at (317) 232-7484.

Beginning Date

Upon receipt.

Ending Date

June 30, 2004

Action

WIB Directors should take actions as noted within this communication. The DWD Administrative Office is attaching guidance to comply with the requirements of this communication. Compliance with this requirement will be monitored as part of the Equal Opportunity assurances.